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8  
9 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the First Amended Petition to  
13 Revoke Probation Against:

14 **KEINO ANDRE RUTHERFORD, M.D.**  
4707 Tyrone Avenue  
15 Sherman Oaks, CA 91423-2319

16 Physician's and Surgeon's Certificate No. A  
17 80432,

18 Respondent.

Case Nos. 800-2018-045441;

800-2017-039108

OAH No. 2018100132

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

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20  
21 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
22 entitled proceedings that the following matters are true:

23 **PARTIES**

24 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board  
25 of California (Board). She brought this action solely in her official capacity and is represented in  
26 this matter by Xavier Becerra, Attorney General of the State of California, by Christine R. Friar,  
27 Deputy Attorney General.

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2. Respondent Keino Andre Rutherford, M.D. (Respondent) is represented in this proceeding by attorney Seth Weinstein, Esq., Law Office of Seth Weinstein, P.C., located at 15260 Ventura Boulevard, Suite 1200, Sherman Oaks, California 91403.

3. On or about September 6, 2002, the Board issued Physician's and Surgeon's Certificate No. A 80432 to Keino Andre Rutherford, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in First Amended Petition to Revoke Probation No. 800-2018-045441, and will expire on October 31, 2019, unless renewed.

## JURISDICTION

4. Petition to Revoke Probation No. 800-2018-045441 was filed before the Board on August 21, 2018. First Amended Petition to Revoke Probation No. 800-2018-045441 was filed on January 14, 2019, and is currently pending against Respondent. All statutorily required documents were properly served on Respondent. Respondent timely filed his Notice of Defenses contesting the Petition to Revoke Probation and First Amended Petition to Revoke Probation.

5. A copy of First Amended Petition to Revoke Probation No. 800-2018-045441 is attached as Exhibit A and incorporated herein by reference.

6. Prior to the time of the filing of the original Petition to Revoke Probation, Respondent filed a Petition for Early Termination on or about November 28, 2017, Case No. 800-2017-039108). The Petition for Early Termination is currently pending before the Board. In entering into this Stipulated Settlement, Respondent hereby withdraws his Petition for Early Termination.

## ADVISEMENT AND WAIVERS

7. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in First Amended Petition to Revoke Probation No. 800-2018-045441. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

8. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the First Amended Petition to Revoke Probation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to

1 testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of  
2 witnesses and the production of documents; the right to reconsideration and court review of an  
3 adverse decision; and all other rights accorded by the California Administrative Procedure Act  
4 and other applicable laws.

5 9. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
6 every right set forth above.

#### 7 CULPABILITY

8 10. Respondent admits the truth of each and every charge and allegation in First  
9 Amended Petition to Revoke Probation No. 800-2018-045441, except that Respondent does not  
10 admit to the criminal charge pending before the Los Angeles Superior Court in *The People of the*  
11 *State of California v. Keino Andre Rutherford*, Case No. 8MN02628.

12 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
13 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
14 Disciplinary Order below.

#### 15 CONTINGENCY

16 12. This stipulation shall be subject to approval by the Medical Board of California.  
17 Respondent understands and agrees that counsel for Complainant and the staff of the Medical  
18 Board of California may communicate directly with the Board regarding this stipulation and  
19 settlement, without notice to or participation by Respondent or his counsel. By signing the  
20 stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek  
21 to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails  
22 to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary  
23 Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal  
24 action between the parties, and the Board shall not be disqualified from further action by having  
25 considered this matter.

26 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
27 copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile  
28 signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

**DISCIPLINARY ORDER**

**IT IS HEREBY ORDERED** that Physician's and Surgeon's Certificate No. A 80432 issued to Respondent Keino Andre Rutherford, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for eight (8) years from November 6, 2015, the effective date of the Board's adoption of the original Stipulate Settlement this case (Case No. 11-2013-233225).

1. ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the use of products or beverages containing alcohol.

2. CLINICAL DIAGNOSTIC EVALUATIONS AND REPORTS: Within thirty (30) calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, Respondent shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three (3) years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with Respondent within the last five (5) years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether Respondent has a substance abuse problem, whether Respondent is a threat to himself or herself or others, and recommendations for substance abuse treatment,

1 practice restrictions, or other recommendations related to Respondent's rehabilitation and ability  
2 to practice safely. If the evaluator determines during the evaluation process that Respondent is a  
3 threat to himself or herself or others, the evaluator shall notify the Board within twenty-four (24)  
4 hours of such a determination.

5 In formulating his or her opinion as to whether Respondent is safe to return to either part-  
6 time or full-time practice and what restrictions or recommendations should be imposed, including  
7 participation in an inpatient or outpatient treatment program, the evaluator shall consider the  
8 following factors: Respondent's license type; Respondent's history; Respondent's documented  
9 length of sobriety (i.e., length of time that has elapsed since Respondent's last substance use);  
10 Respondent's scope and pattern of substance abuse; Respondent's treatment history, medical  
11 history and current medical condition; the nature, duration and severity of Respondent's  
12 substance abuse problem or problems; and whether Respondent is a threat to himself or herself or  
13 the public.

14 For all clinical diagnostic evaluations, a final written report shall be provided to the Board  
15 no later than ten (10) days from the date the evaluator is assigned the matter. If the evaluator  
16 requests additional information or time to complete the evaluation and report, an extension may  
17 be granted, but shall not exceed thirty (30) days from the date the evaluator was originally  
18 assigned the matter.

19 The Board shall review the clinical diagnostic evaluation report within five (5) business  
20 days of receipt to determine whether Respondent is safe to return to either part-time or full-time  
21 practice and what restrictions or recommendations shall be imposed on Respondent based on the  
22 recommendations made by the evaluator. Respondent shall not be returned to practice until he or  
23 she has at least thirty (30) days of negative biological fluid tests or biological fluid tests indicating  
24 that he or she has not used, consumed, ingested, or administered to himself or herself a prohibited  
25 substance, as defined in section 1361.51, subdivision (e), of Title 16 of the California Code of  
26 Regulations.

27 Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall  
28 not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic

1 evaluation, including any and all testing deemed necessary by the examiner, the Board or its  
2 designee, shall be borne by the licensee.

3 Respondent shall not engage in the practice of medicine until notified by the Board or its  
4 designee that he or she is fit to practice medicine safely. The period of time that Respondent is  
5 not practicing medicine shall not be counted toward completion of the term of probation.

6 Respondent shall undergo biological fluid testing as required in this Decision at least two (2)  
7 times per week while awaiting the notification from the Board if he or she is fit to practice  
8 medicine safely.

9 Respondent shall comply with all restrictions or conditions recommended by the examiner  
10 conducting the clinical diagnostic evaluation within fifteen (15) calendar days after being notified  
11 by the Board or its designee.

12 3. NOTICE OF EMPLOYER OR SUPERVISOR INFORMATION. Within seven (7)  
13 days of the effective date of this Decision, Respondent shall provide to the Board the names,  
14 physical addresses, mailing addresses, and telephone numbers of any and all employers and  
15 supervisors. Respondent shall also provide specific, written consent for the Board, Respondent's  
16 worksite monitor, and Respondent's employers and supervisors to communicate regarding  
17 Respondent's work status, performance, and monitoring.

18 For purposes of this section, "supervisors" shall include the Chief of Staff and Health or  
19 Well Being Committee Chair, or equivalent, if applicable, when the Respondent has medical staff  
20 privileges.

21 4. BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
22 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
23 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
24 follicle testing, or similar drug screening approved by the Board or its designee. Respondent shall  
25 make daily contact with the Board or its designee to determine whether biological fluid testing is  
26 required. Respondent shall be tested on the date of the notification as directed by the Board or its  
27 designee. The Board may order a Respondent to undergo a biological fluid test on any day, at  
28 any time, including weekends and holidays. Except when testing on a specific date as ordered by

1 the Board or its designee, the scheduling of biological fluid testing shall be done on a random  
2 basis. The cost of biological fluid testing shall be borne by the Respondent.

3 During the first year of probation, Respondent shall be subject to 52 to 104 random tests.  
4 During the second year of probation and for the duration of the probationary term, up to five (5)  
5 years, Respondent shall be subject to 36 to 104 random tests per year. Only if there has been no  
6 positive biological fluid tests in the previous five (5) consecutive years of probation, may testing  
7 be reduced to one (1) time per month. Nothing precludes the Board from increasing the number  
8 of random tests to the first-year level of frequency for any reason.

9 Prior to practicing medicine, Respondent shall contract with a laboratory or service,  
10 approved in advance by the Board or its designee, that will conduct random, unannounced,  
11 observed, biological fluid testing and meets all of the following standards:

12 (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry  
13 Association or have completed the training required to serve as a collector for the United  
14 States Department of Transportation.

15 (b) Its specimen collectors conform to the current United States Department of  
16 Transportation Specimen Collection Guidelines.

17 (c) Its testing locations comply with the Urine Specimen Collection Guidelines published  
18 by the United States Department of Transportation without regard to the type of test  
19 administered.

20 (d) Its specimen collectors observe the collection of testing specimens.

21 (e) Its laboratories are certified and accredited by the United States Department of Health  
22 and Human Services.

23 (f) Its testing locations shall submit a specimen to a laboratory within one (1) business day  
24 of receipt and all specimens collected shall be handled pursuant to chain of custody  
25 procedures. The laboratory shall process and analyze the specimens and provide legally  
26 defensible test results to the Board within seven (7) business days of receipt of the  
27 specimen. The Board will be notified of non-negative results within one (1) business day  
28 and will be notified of negative test results within seven (7) business days.



- 1 (g) Its testing locations possess all the materials, equipment, and technical expertise  
2 necessary in order to test Respondent on any day of the week.
- 3 (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens  
4 for the detection of alcohol and illegal and controlled substances.
- 5 (i) It maintains testing sites located throughout California.
- 6 (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line  
7 computer database that allows the Respondent to check in daily for testing.
- 8 (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff  
9 access to drug test results and compliance reporting information that is available 24 hours a  
10 day.
- 11 (l) It employs or contracts with toxicologists that are licensed physicians and have  
12 knowledge of substance abuse disorders and the appropriate medical training to interpret  
13 and evaluate laboratory biological fluid test results, medical histories, and any other  
14 information relevant to biomedical information.
- 15 (m) It will not consider a toxicology screen to be negative if a positive result is obtained  
16 while practicing, even if the Respondent holds a valid prescription for the substance.

17 Prior to changing testing locations for any reason, including during vacation or other travel,  
18 alternative testing locations must be approved by the Board and meet the requirements above.

19 The contract shall require that the laboratory directly notify the Board or its designee of  
20 non-negative results within one (1) business day and negative test results within seven (7)  
21 business days of the results becoming available. Respondent shall maintain this laboratory or  
22 service contract during the period of probation.

23 A certified copy of any laboratory test result may be received in evidence in any  
24 proceedings between the Board and Respondent.

25 If a biological fluid test result indicates Respondent has used, consumed, ingested, or  
26 administered to himself or herself a prohibited substance, the Board shall order Respondent to  
27 cease practice and instruct Respondent to leave any place of work where Respondent is practicing  
28 medicine or providing medical services. The Board shall immediately notify all of Respondent's

1 employers, supervisors and work monitors, if any, that Respondent may not practice medicine or  
2 provide medical services while the cease-practice order is in effect.

3 A biological fluid test will not be considered negative if a positive result is obtained while  
4 practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited  
5 substance use exists, the Board shall lift the cease-practice order within one (1) business day.

6 After the issuance of a cease-practice order, the Board shall determine whether the positive  
7 biological fluid test is in fact evidence of prohibited substance use by consulting with the  
8 specimen collector and the laboratory, communicating with the licensee, his or her treating  
9 physician(s), other health care provider, or group facilitator, as applicable.

10 For purposes of this condition, the terms "biological fluid testing" and "testing" mean the  
11 acquisition and chemical analysis of a Respondent's urine, blood, breath, or hair.

12 For purposes of this condition, the term "prohibited substance" means an illegal drug, a  
13 lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by  
14 Respondent and approved by the Board, alcohol, or any other substance the Respondent has been  
15 instructed by the Board not to use, consume, ingest, or administer to himself or herself.

16 If the Board confirms that a positive biological fluid test is evidence of use of a prohibited  
17 substance, Respondent has committed a major violation, as defined in section 1361.52(a), and the  
18 Board shall impose any or all of the consequences set forth in section 1361.52(b), in addition to  
19 any other terms or conditions the Board determines are necessary for public protection or to  
20 enhance Respondent's rehabilitation.

21 5. SUBSTANCE ABUSE SUPPORT GROUP MEETINGS. Within thirty (30) days of  
22 the effective date of this Decision, Respondent shall submit to the Board or its designee, for its  
23 prior approval, the name of a substance abuse support group which he or she shall attend for the  
24 duration of probation. Respondent shall attend substance abuse support group meetings at least  
25 once per week, or as ordered by the Board or its designee. Respondent shall pay all substance  
26 abuse support group meeting costs.

27 The facilitator of the substance abuse support group meeting shall have a minimum of three  
28 (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed

1 or certified by the state or nationally certified organizations. The facilitator shall not have a  
2 current or former financial, personal, or business relationship with Respondent within the last five  
3 (5) years. Respondent's previous participation in a substance abuse group support meeting led by  
4 the same facilitator does not constitute a prohibited current or former financial, personal, or  
5 business relationship.

6 The facilitator shall provide a signed document to the Board or its designee showing  
7 Respondent's name, the group name, the date and location of the meeting, Respondent's  
8 attendance, and Respondent's level of participation and progress. The facilitator shall report any  
9 unexcused absence by Respondent from any substance abuse support group meeting to the Board,  
10 or its designee, within twenty-four (24) hours of the unexcused absence.

11 6. WORKSITE MONITOR FOR SUBSTANCE-ABUSING LICENSEE. Within thirty  
12 (30) calendar days of the effective date of this Decision, Respondent shall submit to the Board or  
13 its designee for prior approval as a worksite monitor, the name and qualifications of one or more  
14 licensed physician and surgeon, other licensed health care professional if no physician and  
15 surgeon is available, or, as approved by the Board or its designee, a person in a position of  
16 authority who is capable of monitoring the Respondent at work.

17 The worksite monitor shall not have a current or former financial, personal, or familial  
18 relationship with Respondent, or any other relationship that could reasonably be expected to  
19 compromise the ability of the monitor to render impartial and unbiased reports to the Board or its  
20 designee. If it is impractical for anyone but Respondent's employer to serve as the worksite  
21 monitor, this requirement may be waived by the Board or its designee, however, under no  
22 circumstances shall Respondent's worksite monitor be an employee or supervisee of the licensee.

23 The worksite monitor shall have an active unrestricted license with no disciplinary action  
24 within the last five (5) years, and shall sign an affirmation that he or she has reviewed the terms  
25 and conditions of Respondent's disciplinary order and agrees to monitor Respondent as set forth  
26 by the Board or its designee.

27 Respondent shall pay all worksite monitoring costs.

28 The worksite monitor shall have face-to-face contact with Respondent in the work

1 environment on as frequent a basis as determined by the Board or its designee, but not less than  
2 once per week; interview other staff in the office regarding Respondent's behavior, if requested  
3 by the Board or its designee; and review Respondent's work attendance.

4 The worksite monitor shall verbally report any suspected substance abuse to the Board and  
5 Respondent's employer or supervisor within one (1) business day of occurrence. If the suspected  
6 substance abuse does not occur during the Board's normal business hours, the verbal report shall  
7 be made to the Board or its designee within one (1) hour of the next business day. A written  
8 report that includes the date, time, and location of the suspected abuse; Respondent's actions; and  
9 any other information deemed important by the worksite monitor shall be submitted to the Board  
10 or its designee within 48 hours of the occurrence.

11 The worksite monitor shall complete and submit a written report monthly or as directed by  
12 the Board or its designee which shall include the following: (1) Respondent's name and  
13 Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3)  
14 the worksite monitor's license number, if applicable; (4) the location or location(s) of the  
15 worksite; (5) the dates Respondent had face-to-face contact with the worksite monitor; (6) the  
16 names of worksite staff interviewed, if applicable; (7) a report of Respondent's work attendance;  
17 (8) any change in Respondent's behavior and/or personal habits; and (9) any indicators that can  
18 lead to suspected substance abuse by Respondent. Respondent shall complete any required  
19 consent forms and execute agreements with the approved worksite monitor and the Board, or its  
20 designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

21 If the worksite monitor resigns or is no longer available, Respondent shall, within five (5)  
22 calendar days of such resignation or unavailability, submit to the Board or its designee, for prior  
23 approval, the name and qualifications of a replacement monitor who will be assuming that  
24 responsibility within fifteen (15) calendar days. If Respondent fails to obtain approval of a  
25 replacement monitor within sixty (60) calendar days of the resignation or unavailability of the  
26 monitor, Respondent shall receive a notification from the Board or its designee to cease the  
27 practice of medicine within three (3) calendar days after being so notified. Respondent shall  
28 cease the practice of medicine until a replacement monitor is approved and assumes monitoring

responsibility.

7. VIOLATION OF PROBATION CONDITION FOR SUBSTANCE ABUSING LICENSEES. Failure to fully comply with any term or condition of probation is a violation of probation.

A. If Respondent commits a major violation of probation as defined by section 1361.52, subdivision (a), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Respondent to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of Regulations, at Respondent's expense. The cease-practice order issued by the Board or its designee shall state that Respondent must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a Respondent must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as thirty calendar (30) days. Respondent may not resume the practice of medicine until notified in writing by the Board or its designee that he or she may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer Respondent for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee.

B. If Respondent commits a minor violation of probation as defined by section 1361.52, subdivision (c), of Title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue a cease-practice order;

(2) Order practice limitations;

(3) Order or increase supervision of Respondent;

(4) Order increased documentation;

(5) Issue a citation and fine, or a warning letter;

(6) Order Respondent to undergo a clinical diagnostic evaluation to be conducted in

1 accordance with section 1361.5, subdivision (c)(1), of Title 16 of the California Code of  
2 Regulations, at Respondent's expense;

3 (7) Take any other action as determined by the Board or its designee.

4 C. Nothing in this Decision shall be considered a limitation on the Board's authority  
5 to revoke Respondent's probation if he or she has violated any term or condition of probation. If  
6 Respondent violates probation in any respect, the Board, after giving Respondent notice and the  
7 opportunity to be heard, may revoke probation and carry out the disciplinary order that was  
8 stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed  
9 against Respondent during probation, the Board shall have continuing jurisdiction until the matter  
10 is final, and the period of probation shall be extended until the matter is final.

11 8. SOLO PRACTICE PROHIBITION. Respondent is prohibited from engaging in the  
12 solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice  
13 where: 1) Respondent merely shares office space with another physician but is not affiliated for  
14 purposes of providing patient care, or 2) Respondent is the sole physician practitioner at that  
15 location.

16 If Respondent fails to establish a practice with another physician or secure employment in  
17 an appropriate practice setting within 60 calendar days of the effective date of this Decision,  
18 Respondent shall receive a notification from the Board or its designee to cease the practice of  
19 medicine within three (3) calendar days after being so notified. The Respondent shall not resume  
20 practice until appropriate practice setting is established.

21 If, during the course of the probation, the Respondent's practice setting changes and the  
22 Respondent is no longer practicing in a setting in compliance with this Decision, the Respondent  
23 shall notify the Board or its designee within 5 calendar days of the practice setting change. IF  
24 Respondent fails to establish a practice with another physician or secure employment in an  
25 appropriate practice setting within 60 calendar days of the practice setting change, Respondent  
26 shall receive a notification from the Board or its designee to cease the practice of medicine within  
27 three (3) calendar days after being so notified. The Respondent shall not resume practice until an  
28 appropriate practice setting is established.

1       9.    NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
2 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
3 Chief Executive Officer at every hospital where privileges or membership are extended to  
4 Respondent, at any other facility where Respondent engages in the practice of medicine,  
5 including all physician and locum tenens registries or other similar agencies, and to the Chief  
6 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
7 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
8 calendar days.

9       This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

10       10.   SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is  
11 prohibited from supervising physician assistants.

12       11.   OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
13 governing the practice of medicine in California and remain in full compliance with any court  
14 ordered criminal probation, payments, and other orders.

15       12.   QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
16 under penalty of perjury on forms provided by the Board, stating whether there has been  
17 compliance with all the conditions of probation.

18       Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
19 of the preceding quarter.

20       13.   GENERAL PROBATION REQUIREMENTS.

21       Compliance with Probation Unit

22       Respondent shall comply with the Board's probation unit.

23       Address Changes

24       Respondent shall, at all times, keep the Board informed of Respondent's business and  
25 residence addresses, email address (if available), and telephone number. Changes of such  
26 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
27 circumstances shall a post office box serve as an address of record, except as allowed by Business  
28 and Professions Code section 2021(b).

1       Place of Practice

2       Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
3 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
4 facility.

5       License Renewal

6       Respondent shall maintain a current and renewed California physician's and surgeon's  
7 license.

8       Travel or Residence Outside California

9       Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
10 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
11 (30) calendar days.

12       In the event Respondent should leave the State of California to reside or to practice,  
13 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
14 departure and return.

15       14. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
16 available in person upon request for interviews either at Respondent's place of business or at the  
17 probation unit office, with or without prior notice throughout the term of probation.

18       15. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
19 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
20 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
21 defined as any period of time Respondent is not practicing medicine as defined in Business and  
22 Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct  
23 patient care, clinical activity or teaching, or other activity as approved by the Board. If  
24 Respondent resides in California and is considered to be in non-practice, Respondent shall  
25 comply with all terms and conditions of probation. All time spent in an intensive training  
26 program which has been approved by the Board or its designee shall not be considered non-  
27 practice and does not relieve Respondent from complying with all the terms and conditions of  
28 probation. Practicing medicine in another state of the United States or Federal jurisdiction while



1 on probation with the medical licensing authority of that state or jurisdiction shall not be  
2 considered non-practice. A Board-ordered suspension of practice shall not be considered as a  
3 period of non-practice.

4 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
5 months, Respondent shall successfully complete the Federation of State Medical Boards' Special  
6 Purpose Examination, or, at the Board's discretion, a clinical competence assessment program  
7 that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model  
8 Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

9 Respondent's period of non-practice while on probation shall not exceed two (2) years.

10 Periods of non-practice will not apply to the reduction of the probationary term.

11 Periods of non-practice for a Respondent residing outside of California will relieve  
12 Respondent of the responsibility to comply with the probationary terms and conditions with the  
13 exception of this condition and the following terms and conditions of probation: Obey All Laws;  
14 General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or  
15 Controlled Substances; and Biological Fluid Testing.

16 16. COMPLETION OF PROBATION. Respondent shall comply with all financial  
17 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
18 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
19 be fully restored.

20 17. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
21 of probation is a violation of probation. If Respondent violates probation in any respect, the  
22 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
23 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation,  
24 or an Interim Suspension Order is filed against Respondent during probation, the Board shall have  
25 continuing jurisdiction until the matter is final, and the period of probation shall be extended until  
26 the matter is final.

27 18. LICENSE SURRENDER. Following the effective date of this Decision, if  
28 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy

1 the terms and conditions of probation, Respondent may request to surrender his or her license.  
2 The Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
3 determining whether or not to grant the request, or to take any other action deemed appropriate  
4 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
5 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
6 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
7 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
8 application shall be treated as a petition for reinstatement of a revoked certificate.

9 19. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
10 with probation monitoring each and every year of probation, as designated by the Board, which  
11 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
12 California and delivered to the Board or its designee no later than January 31 of each calendar  
13 year.

14 ACCEPTANCE

15 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
16 discussed it with my attorney, Seth Weinstein, Esq. I understand the stipulation and the effect it  
17 will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and  
18 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the  
19 Decision and Order of the Medical Board of California.

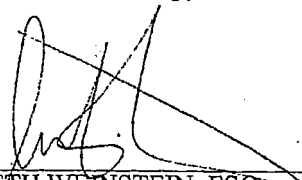
20  
21 DATED: 4/23/19

22   
23 KEINO ANDRE RUTHERFORD, M.D.  
24 Respondent  
25  
26  
27  
28

///  
///  
///

1 I have read and fully discussed with Respondent Keino Andre Rutherford, M.D. the terms  
2 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
3 Order. I approve its form and content.

4  
5 DATED: 04-24-2019

  
6 SETH WEINSTEIN, ESQ.  
Attorney for Respondent

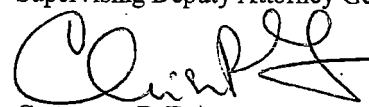
7  
8 **ENDORSEMENT**

9 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
10 submitted for consideration by the Medical Board of California.

11 Dated: 4/24/2019

12 Respectfully submitted,

13 XAVIER BECERRA  
Attorney General of California  
14 E. A. JONES III  
Supervising Deputy Attorney General

15   
16 CHRISTINE R. FRIAR  
17 Deputy Attorney General  
Attorneys for Complainant

18  
19  
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21 LA2018501740  
53357049.docx

**Exhibit A**

**First Amended Petition to Revoke Probation No. 800-2018-045441**

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO Jan 14 20 19  
BY D. Richards ANALYST

XAVIER BECERRA  
Attorney General of California  
JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
CHRISTINE R. FRIAR  
Deputy Attorney General  
State Bar No. 228421  
California Department of Justice  
300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
Telephone: (213) 269-6472  
Facsimile: (213) 897-9395  
*Attorneys for Complainant*

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the First Amended Petition to  
Revoke Probation Against:

**KEINO ANDRE RUTHERFORD, M.D.**  
4707 Tyrone Avenue  
Sherman Oaks, California 91423-2319

Physician's and Surgeon's Certificate  
No. A 80432,

Respondent.

Case No. 800-2018-045441

OAH No. 2018100335

**FIRST AMENDED PETITION TO  
REVOKE PROBATION**

Complainant alleges:

**PARTIES**

1. Kimberly Kirchmeyer (Complainant) brings this First Amended Petition to Revoke Probation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about September 6, 2002, the Medical Board of California issued Physician's and Surgeon's Certificate Number A 80432 to Keino Andre Rutherford, M.D. (Respondent). The Physician's and Surgeon's Certificate was in effect at all times relevant to the charges brought herein and will expire on October 31, 2019, unless renewed.

///

3. In a disciplinary action entitled *In the Matter of the Accusation Against: Keino Andre Rutherford, M.D.*, Case No. 11-2013-233225, the Board issued a decision, effective November 6, 2015, in which Respondent's Physician's and Surgeon's Certificate was revoked. However, the revocation was stayed and Respondent's Physician's and Surgeon's Certificate was placed on probation for a period of five (5) years with certain terms and conditions. A copy of that Decision and Order is attached as Exhibit A and is incorporated by reference.

4. On February 22, 2016, due to Respondent's failure to comply with Condition No. 2 (Alcohol – Abstain from Use) of the Disciplinary Order in Case No. 11-2013-233225, a Cease Practice Order was issued prohibiting Respondent from engaging in the practice of medicine. That Cease Practice Order has since dissolved.

5. On January 2, 2019, due to Respondent's failure to comply with Condition No. 2 (Alcohol – Abstain from Use) and Condition No. 3 (Biological Fluid Testing) of the Disciplinary Order in Case No. 11-2013-233225, a Cease Practice Order was issued prohibiting Respondent from engaging in the practice of medicine. That Cease Practice Order is still in effect.

## JURISDICTION

6. This First Amended Petition to Revoke Probation is brought before the Board under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

7. Section 2004 of the Code states,

“The board shall have the responsibility for the following:

“(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

“(b) The administration and hearing of disciplinary actions.

“(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

“(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

“ ”

1        8. Section 2227 of the Code provides that a licensee who is found guilty under the  
2 Medical Malpractice Act may have his or her license revoked, suspended for a period not to  
3 exceed one year, placed on probation and required to pay the costs of probation monitoring, be  
4 publically reprimanded, or have such other action taken in relation to discipline as the Board  
5 deems proper.

6        9. This First Amended Petition to Revoke Probation is further brought under the  
7 authority of the Board's Decision in Case No. 11-2013-233225, which provides in pertinent part,

8        "14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
9 of probation is a violation of probation. If Respondent violates probation in any respect, the  
10 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
11 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
12 Probation, or an Interim Suspension Order is filed against Respondent during probation, the  
13 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
14 be extended until the matter is final."

15                                    **FIRST CAUSE TO REVOKE PROBATION**

16                                    **(Alcohol - Abstain from Use)**

17        10. At all times after the effective date of Respondent's probation, Condition 2 stated:

18        "Respondent shall abstain completely from the use of products or beverages containing  
19 alcohol.

20        "If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall  
21 receive a notification from the Board or its designee to immediately cease the practice of  
22 medicine. The Respondent shall not resume the practice of medicine until final decision on an  
23 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke  
24 probation shall be filed by the Board within 15 days of the notification to cease practice. If the  
25 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board  
26 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent  
27 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or  
28 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice

1 shall not apply to the reduction of the probationary time period.

2 "If the Board does not file an accusation or petition to revoke probation within 15 days of  
3 the issuance of the notification to cease practice or does not provide Respondent with a hearing  
4 within 30 days of a such a request, the notification of cease practice shall be dissolved."

5 11. Respondent's probation is subject to revocation because he failed to comply with  
6 Condition 2, referenced above. The facts and circumstances regarding this violation are as  
7 follows:

8 February 7, 2016 Positive Biological Fluid Testing Result

9 A. At all times after the effective date of Respondent's probation, Condition 3 stated:

10 "Respondent shall immediately submit to biological fluid testing, at Respondent's expense,  
11 upon request of the Board or its designee. "Biological fluid testing" may include, but is not  
12 limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by  
13 the Board or its designee. Prior to practicing medicine, Respondent shall contract with a  
14 laboratory or service approved in advance by the Board or its designee that will conduct random,  
15 unannounced, observed, biological fluid testing. The contract shall require results of the tests to  
16 be transmitted by the laboratory or service directly to the Board or its designee within four hours  
17 of the results becoming available. Respondent shall maintain this laboratory or service contract  
18 during the period of probation.

19 "A certified copy of any laboratory test result may be received in evidence in any  
20 proceedings between the Board and Respondent.

21 "If Respondent fails to cooperate in a random biological fluid testing program within the  
22 specified time frame, Respondent shall receive a notification from the Board or its designee to  
23 immediately cease the practice of medicine. The Respondent shall not resume the practice of  
24 medicine until final decision on an accusation and/or a petition to revoke probation. An  
25 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the  
26 notification to cease practice. If the Respondent requests a hearing on the accusation and/or  
27 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30  
28 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be



1 received from the Administrative Law Judge or the Board within 15 days unless good cause can  
2 be shown for the delay. The cessation of practice shall not apply to the reduction of the  
3 probationary time period.

4 "If the Board does not file an accusation or petition to revoke probation within 15 days of  
5 the issuance of the notification to cease practice or does not provide Respondent with a hearing  
6 within 30 days of a such a request, the notification of cease practice shall be dissolved."

7 B. On February 7, 2016, and pursuant to the terms and conditions of his probation,  
8 Respondent was selected by the Board for biological fluid testing, specifically, a urine test.

9 C. On February 7, 2016, Respondent provided a urine sample to be tested for the  
10 detection of alcohol. A positive test result is Ethyl Glucuronide (Etg) at 250 ng/mL or above  
11 and/or Ethyl Sulfate (Ets) at 50 ng/mL or above. Respondent's February 7, 2016 sample tested  
12 for Ethyl Glucuronide (Etg) at 10,600 ng/mL and Ethyl Sulfate (Ets) at 2,122 ng/mL. These  
13 levels are consistent with the ingestion of alcohol.

14 D. On or about February 12, 2016, the Board notified Respondent of the positive test and  
15 requested an explanation.

16 E. On or about February 16, 2016, Respondent reported to the Board that he had taken  
17 flu medication on the night of February 6, 2016.

18 April 29, 2018 Arrest for Driving Under the Influence of Alcohol

19 F. On or about April 28, 2018, at approximately 2:30 a.m., a California Highway Patrol  
20 Officer observed a vehicle on the I-405 freeway make an unsafe lane change. The vehicle was  
21 further observed to be travelling at a rate of 78 miles per hour when the maximum speed limit  
22 was 65 miles per hour.

23 G. The Officer instructed the driver, via the public address system, to exit the freeway at  
24 Ventura Boulevard.

25 H. The driver, Respondent, complied and came to a stop in a parking lot located on  
26 Sepulveda Boulevard and Green Leaf Street.

27 I. Upon making contact with Respondent through the opened driver side window, the  
28 Officer smelled alcohol emitting from the vehicle.

1 J. After Respondent exited the vehicle, the Officer observed Respondent to be walking  
2 with an unsteady gait.

3 K. The Officer also observed Respondent's speech to be slurred, his eyes red and watery  
4 and his breath and/or person to smell of alcohol.

5 L. Respondent performed a variety of field sobriety tests administered by the Officer and  
6 did not perform satisfactorily.

7 M. Respondent was arrested for violating Vehicle Code section 23152, subdivision (a)  
8 (misdemeanor driving under the influence).

9 N. At the Van Nuys police station, Respondent submitted to a breath alcohol test and his  
10 blood alcohol level registered at 0.147%.

11 O. In relation to his arrest, on or about May 17, 2018, Respondent was charged with  
12 violating Vehicle Code sections 23152, subdivision (a) (misdemeanor driving under the  
13 influence), and 23152, subdivision (b) (misdemeanor driving under the influence with a blood  
14 alcohol concentration of 0.08% or higher) in *The People of the State of California vs. Keino*  
15 *Andre Rutherford*, Case No. 8MN02628, Los Angeles Superior Court.

16 P. On or about June 28, 2018, Respondent participated in an interview with his Board-  
17 appointed probation monitor. Respondent admitted that he had been arrested on April 28, 2018,  
18 and that he had a "lapse of judgment" and had been drinking with friends.

19 December 5, 2018 Positive Biological Fluid Testing Result

20 Q. On December 5, 2018, and pursuant to the terms and conditions of his probation,  
21 Respondent was selected by the Board for biological fluid testing, specifically, a blood test.

22 R. On December 5, 2018, Respondent underwent a Phosphatidyl Ethanol (PEth test) test  
23 for detection of alcohol in the blood. It is a direct biomarker, which forms after an individual  
24 consumes alcohol. A positive PEth result is 20 ng/mL or above. Respondent's PEth result was  
25 67 ng/mL, positive for the presence of alcohol.

26 S. The Board notified Respondent of the positive test and requested an explanation.

27 T. On or about December 14, 2018, Respondent reported to the Board that it was  
28 possible that the positive blood test was the result of his recent consumption of chicken "sauce"

1 or soup. Specifically, Respondent explained that over the Thanksgiving Holiday, a relative made  
2 a soup that Respondent consumed 4-5 bowls over the course of 4-5 days. After learning of the  
3 positive test, Respondent obtained the recipe from his relative and discovered that the soup was  
4 made with a full bottle (750 mL) of white wine. Respondent asserts that he could not detect the  
5 wine in the soup at the time of consumption.

6 U. Respondent also reported that in the week prior to the December 5, 2018 test that he  
7 had an upper respiratory infection and used Contact Severe Cold formula for 5 days.

8 V. Respondent further admitted to manipulating his biological fluid testing results by  
9 avoiding the use of products containing alcohol on the days he is selected for testing. Respondent  
10 admits to using products containing alcohol on days that he is not selected for testing.

11 12. As set forth above, Respondent failed to abstain from the use of alcohol and,  
12 therefore, violated Condition No. 2 of the Disciplinary Order, which requires that he abstain from  
13 the use of products or beverages containing alcohol.

## 14 **SECOND CAUSE TO REVOKE PROBATION**

### 15 **(Biological Fluid Testing)**

16 13. Respondent's probation is subject to revocation because he failed to comply with  
17 Condition 3 of his probation, which is set forth in full in paragraph 11.A and incorporated herein.  
18 The facts and circumstances regarding this violation are as follows:

19 A. On or about November 20, 2018, and pursuant to Condition 3 of his probation,  
20 Respondent was selected for biological fluid testing, specifically a blood test.

21 B. On November 20, 2018, Respondent did not provide a blood sample for biological  
22 fluid testing, but instead a urine sample.

23 C. On December 5, 2018, the Board sent Respondent a non-compliance letter in  
24 connection with his November 20, 2018 biological fluid test.

25 14. As set forth above, Respondent violated Condition No. 3 of the Disciplinary Order,  
26 which requires that Respondent submit to biological fluid testing in the manner instructed to by  
27 the Board.

28 ///

**DISCIPLINE CONSIDERATIONS**

15. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about June 28, 2010, the Board issued Respondent Citation No. 20-2010-207789 in accordance with Code sections 125.9 for violation of Code section 2234 (unprofessional conduct for failing to report a misdemeanor conviction in violation of Code section 802.1). Specifically, Respondent failed to report to the Board, in writing within thirty (30) days, a misdemeanor conviction for violation of Vehicle Code section 23152, subdivision (a) (driving under the influence of alcohol), to which he pled guilty on or about May 5, 2010. The Board fined Respondent \$750.00. That citation is now final and is incorporated by reference as if fully set forth.

16. Additionally, Complainant alleges that on or about February 22, 2016, due to Respondent's failure to comply with Condition No. 2 of the Disciplinary Order in Case No. 11-2013-233225 (Alcohol – Abstain from Use), a Cease Practice Order was issued prohibiting Respondent from engaging in the practice of medicine. The Cease Practice Order has since dissolved.

17. Complainant further alleges that on January 2, 2019, due to Respondent's failure to comply with Condition No. 2 (Alcohol – Abstain from Use) and Condition No. 3 (Biological Fluid Testing) of the Disciplinary Order in Case No. 11-2013-233225, a Cease Practice Order was issued prohibiting Respondent from engaging in the practice of medicine. That Cease Practice Order is still in effect.

**PRAYER**


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking the probation that was granted by the Board in Case No. 11-2013-233225 and imposing the disciplinary order that was stayed thereby revoking Physician's and Surgeon's Certificate No. A 80432 issued to Keino Andre Rutherford, M.D.;

2. Revoking or suspending Physician's and Surgeon's Certificate No. A 80432, issued to Keino Andre Rutherford, M.D.;

- 1        3. . Revoking, suspending or denying approval of Keino Andre Rutherford, M.D.'s  
2 authority to supervise physician assistants and advanced practice nurses;  
3        4.     Ordering Keino Andre Rutherford, M.D. to pay, if probation is continued or  
4 extended, the costs of probation monitoring; and  
5        5.     Taking such other and further action as deemed necessary and proper.

6  
7 DATED: January 14, 2019

  
KIMBERLY KIRCHMEYER  
Executive Director  
Medical Board of California  
Department of Consumer Affairs  
State of California  
*Complainant*

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## **Exhibit A**

### **Decision and Order**

**Medical Board of California Case No. 11-2013-233225**

BEFORE THE  
MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
STATE OF CALIFORNIA

In the Matter of the Accusation  
Against:

Keino Andre Rutherford, M.D.

Case No. 11-2013-233225

Physician's and Surgeon's  
Certificate No. A 80432

Respondent

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 6, 2015.

IT IS SO ORDERED: October 8, 2015.

MEDICAL BOARD OF CALIFORNIA

  
Dev Gnanadev, M.D., Chair  
Panel B

1 KAMALA D. HARRIS  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 CHRISTINE R. FRIAR  
Deputy Attorney General  
4 State Bar No. 228421  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-6404  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

8 **BEFORE THE**  
**MEDICAL BOARD OF CALIFORNIA**  
9 **DEPARTMENT OF CONSUMER AFFAIRS**  
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 11-2013-233225

12 **KEINO ANDRE RUTHERFORD, M.D.**  
13 9449 Imperial Hwy  
Downey, CA 90242

OAH No. 2014060680

14 Physician's and Surgeon's Certificate  
15 No. A 80432,

**STIPULATED SETTLEMENT AND  
DISCIPLINARY ORDER**

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-  
18 entitled proceedings that the following matters are true:

19 **PARTIES**

20 1. Kimberly Kirchmeyer ("Complainant") is the Executive Director of the Medical  
21 Board of California. She brought this action solely in her official capacity and is represented in  
22 this matter by Kamala D. Harris, Attorney General of the State of California, by Christine R.  
23 Friar, Deputy Attorney General.

24 2. Respondent Keino Andre Rutherford, M.D. ("Respondent") is represented in this  
25 proceeding by attorney Theodore A. Cohen, Esq., whose address is: Law Offices of Theodore A.  
26 Cohen, 3550 Wilshire Blvd., Suite 1280, Los Angeles, CA 90010.

27 3. On or about September 6, 2002, the Medical Board of California, Department of  
28 Consumer Affairs ("Board") issued Physician's and Surgeon's Certificate No. A 80432 to.



1 Respondent. That Certificate was in full force and effect at all times relevant to the charges  
2 brought in Accusation No. 11-2013-233225 and will expire on October 31, 2015, unless renewed.

3 **JURISDICTION**

4 4. Accusation No. 11-2013-233225 was filed before the Board, and is currently pending  
5 against Respondent. The Accusation and all other statutorily required documents were properly  
6 served on Respondent on May 23, 2014. Respondent timely filed his Notice of Defense  
7 contesting the Accusation and denies being under the influence of alcohol as alleged in the  
8 Accusation.

9 5. A copy of Accusation No. 11-2013-233225 is attached as Exhibit "A" and  
10 incorporated herein by reference.

11 **ADVISEMENT AND WAIVERS**

12 6. Respondent has carefully read, fully discussed with counsel, and understands the  
13 charges and allegations in Accusation No. 11-2013-233225. Respondent has also carefully read,  
14 fully discussed with counsel, and understands the effects of this Stipulated Settlement and  
15 Disciplinary Order.

16 7. Respondent is fully aware of his legal rights in this matter, including the right to a  
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel at  
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to  
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel  
20 the attendance of witnesses and the production of documents; the right to reconsideration and  
21 court review of an adverse decision; and all other rights accorded by the California  
22 Administrative Procedure Act and other applicable laws.

23 8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and  
24 every right set forth above.

25 **CULPABILITY**

26 9. Respondent admits that at a hearing, Complainant could set forth a prima facie case  
27 for the charges and allegations in Accusation No. 11-2013-233225, and Respondent declines to  
28 defend same. Respondent further agrees that his Physician and Surgeon's Certificate is subject to

1 discipline and he agrees to be bound by the Board's imposition of discipline as set forth in the  
2 Disciplinary Order below.

3 10. Respondent further agrees that if he ever petitions for early termination or  
4 modification of probation, or if the Board ever petitions for revocation of probation, all of the  
5 charges and allegations contained in Accusation No. 11-2013-233225 shall be deemed true,  
6 correct and fully admitted by Respondent for purposes of that proceeding or any other licensing  
7 proceeding involving Respondent in the State of California.

8 11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to  
9 discipline and he agrees to be bound by the Board's probationary terms as set forth in the  
10 Disciplinary Order below.

#### 11 CONTINGENCY

12 12. This stipulation shall be subject to approval by the Board. Respondent understands  
13 and agrees that counsel for Complainant and the staff of the Board may communicate directly  
14 with the Board regarding this stipulation and settlement, without notice to or participation by  
15 Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he  
16 may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board  
17 considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order,  
18 the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this  
19 paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not  
20 be disqualified from further action by having considered this matter.

21 13. The parties understand and agree that Portable Document Format (PDF) and facsimile  
22 copies of this Stipulated Settlement and Disciplinary Order, including Portable Document Format  
23 (PDF) and facsimile signatures thereto, shall have the same force and effect as the originals.

24 14. In consideration of the foregoing admissions and stipulations, the parties agree that  
25 the Board may, without further notice or formal proceeding, issue and enter the following  
26 Disciplinary Order:

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**DISCIPLINARY ORDER**

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 80432 issued to Respondent Keino Andre Rutherford, M.D. is revoked. However, the revocation is stayed and Respondent is placed on probation for five (5) years on the following terms and conditions.

1. **CONTROLLED SUBSTANCES - ABSTAIN FROM USE.** Respondent shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to Respondent by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, Respondent shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If Respondent has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, Respondent shall receive a notification from the Board or its designee to immediately cease the practice of medicine. The Respondent shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If the Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide Respondent with a hearing within 30 days of a such a request, the notification of cease practice shall be dissolved.

1       2.    ALCOHOL - ABSTAIN FROM USE. Respondent shall abstain completely from the  
2 use of products or beverages containing alcohol.

3       If Respondent has a confirmed positive biological fluid test for alcohol, Respondent shall  
4 receive a notification from the Board or its designee to immediately cease the practice of  
5 medicine. The Respondent shall not resume the practice of medicine until final decision on an  
6 accusation and/or a petition to revoke probation. An accusation and/or petition to revoke  
7 probation shall be filed by the Board within 15 days of the notification to cease practice. If the  
8 Respondent requests a hearing on the accusation and/or petition to revoke probation, the Board  
9 shall provide the Respondent with a hearing within 30 days of the request, unless the Respondent  
10 stipulates to a later hearing. A decision shall be received from the Administrative Law Judge or  
11 the Board within 15 days unless good cause can be shown for the delay. The cessation of practice  
12 shall not apply to the reduction of the probationary time period.

13       If the Board does not file an accusation or petition to revoke probation within 15 days of the  
14 issuance of the notification to cease practice or does not provide Respondent with a hearing  
15 within 30 days of a such a request, the notification of cease practice shall be dissolved.

16       3.    BIOLOGICAL FLUID TESTING. Respondent shall immediately submit to  
17 biological fluid testing, at Respondent's expense, upon request of the Board or its designee.  
18 "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair  
19 follicle testing, or similar drug screening approved by the Board or its designee. Prior to  
20 practicing medicine, Respondent shall contract with a laboratory or service approved in advance  
21 by the Board or its designee that will conduct random, unannounced, observed, biological fluid  
22 testing. The contract shall require results of the tests to be transmitted by the laboratory or  
23 service directly to the Board or its designee within four hours of the results becoming available.  
24 Respondent shall maintain this laboratory or service contract during the period of probation.

25       A certified copy of any laboratory test result may be received in evidence in any  
26 proceedings between the Board and Respondent.

27       If Respondent fails to cooperate in a random biological fluid testing program within the  
28 specified time frame, Respondent shall receive a notification from the Board or its designee to

1 immediately cease the practice of medicine. The Respondent shall not resume the practice of  
2 medicine until final decision on an accusation and/or a petition to revoke probation. An  
3 accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the  
4 notification to cease practice. If the Respondent requests a hearing on the accusation and/or  
5 petition to revoke probation, the Board shall provide the Respondent with a hearing within 30  
6 days of the request, unless the Respondent stipulates to a later hearing. A decision shall be  
7 received from the Administrative Law Judge or the Board within 15 days unless good cause can  
8 be shown for the delay. The cessation of practice shall not apply to the reduction of the  
9 probationary time period.

10 If the Board does not file an accusation or petition to revoke probation within 15 days of the  
11 issuance of the notification to cease practice or does not provide Respondent with a hearing  
12 within 30 days of a such a request, the notification of cease practice shall be dissolved.

13 4. PROFESSIONALISM PROGRAM (ETHICS COURSE). Within 60 calendar days of  
14 the effective date of this Decision, Respondent shall enroll in a professionalism program, that  
15 meets the requirements of Title 16, California Code of Regulations (CCR) section 1358.  
16 Respondent shall participate in and successfully complete that program. Respondent shall  
17 provide any information and documents that the program may deem pertinent. Respondent shall  
18 successfully complete the classroom component of the program not later than six (6) months after  
19 Respondent's initial enrollment, and the longitudinal component of the program not later than the  
20 time specified by the program, but no later than one (1) year after attending the classroom  
21 component. The professionalism program shall be at Respondent's expense and shall be in  
22 addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

23 A professionalism program taken after the acts that gave rise to the charges in the  
24 Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board  
25 or its designee, be accepted towards the fulfillment of this condition if the program would have  
26 been approved by the Board or its designee had the program been taken after the effective date of  
27 this Decision.

28 Respondent shall submit a certification of successful completion to the Board or its

1 designee not later than 15 calendar days after successfully completing the program or not later  
2 than 15 calendar days after the effective date of the Decision, whichever is later.

3 5. MONITORING - PRACTICE. Within 30 calendar days of the effective date of this  
4 Decision, Respondent shall submit to the Board or its designee for prior approval as a practice  
5 monitor(s), the name and qualifications of one or more licensed physicians and surgeons whose  
6 licenses are valid and in good standing, and who are preferably American Board of Medical  
7 Specialties (ABMS) certified. A monitor shall have no prior or current business or personal  
8 relationship with Respondent, or other relationship that could reasonably be expected to  
9 compromise the ability of the monitor to render fair and unbiased reports to the Board, including  
10 but not limited to any form of bartering, shall be in Respondent's field of practice, and must agree  
11 to serve as Respondent's monitor. Respondent shall pay all monitoring costs.

12 The Board or its designee shall provide the approved monitor with copies of the Decision(s)  
13 and Accusation(s), and a proposed monitoring plan. Within 15 calendar days of receipt of the  
14 Decision(s), Accusation(s), and proposed monitoring plan, the monitor shall submit a signed  
15 statement that the monitor has read the Decision(s) and Accusation(s), fully understands the role  
16 of a monitor, and agrees or disagrees with the proposed monitoring plan. If the monitor disagrees  
17 with the proposed monitoring plan, the monitor shall submit a revised monitoring plan with the  
18 signed statement for approval by the Board or its designee.

19 Within 60 calendar days of the effective date of this Decision, and continuing throughout  
20 probation, Respondent's practice shall be monitored by the approved monitor. Respondent shall  
21 make all records available for immediate inspection and copying on the premises by the monitor  
22 at all times during business hours and shall retain the records for the entire term of probation.

23 If Respondent fails to obtain approval of a monitor within 60 calendar days of the effective  
24 date of this Decision, Respondent shall receive a notification from the Board or its designee to  
25 cease the practice of medicine within three (3) calendar days after being so notified. Respondent  
26 shall cease the practice of medicine until a monitor is approved to provide monitoring  
27 responsibility.

28 The monitor(s) shall submit a quarterly written report to the Board or its designee which

1 includes an evaluation of Respondent's performance, indicating whether Respondent's practices  
2 are within the standards of practice of medicine, and whether Respondent is practicing medicine  
3 safely, billing appropriately or both. It shall be the sole responsibility of Respondent to ensure  
4 that the monitor submits the quarterly written reports to the Board or its designee within 10  
5 calendar days after the end of the preceding quarter.

6 If the monitor resigns or is no longer available, Respondent shall, within 5 calendar days of  
7 such resignation or unavailability, submit to the Board or its designee, for prior approval, the  
8 name and qualifications of a replacement monitor who will be assuming that responsibility within  
9 15 calendar days. If Respondent fails to obtain approval of a replacement monitor within 60  
10 calendar days of the resignation or unavailability of the monitor, Respondent shall receive a  
11 notification from the Board or its designee to cease the practice of medicine within three (3)  
12 calendar days after being so notified Respondent shall cease the practice of medicine until a  
13 replacement monitor is approved and assumes monitoring responsibility.

14 In lieu of a monitor, Respondent may participate in a professional enhancement program  
15 equivalent to the one offered by the Physician Assessment and Clinical Education Program at the  
16 University of California, San Diego School of Medicine, that includes, at minimum, quarterly  
17 chart review, semi-annual practice assessment, and semi-annual review of professional growth  
18 and education. Respondent shall participate in the professional enhancement program at  
19 Respondent's expense during the term of probation.

20 6. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the  
21 Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the  
22 Chief Executive Officer at every hospital where privileges or membership are extended to  
23 Respondent, at any other facility where Respondent engages in the practice of medicine,  
24 including all physician and locum tenens registries or other similar agencies, and to the Chief  
25 Executive Officer at every insurance carrier which extends malpractice insurance coverage to  
26 Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15  
27 calendar days.

28 This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

1       7.   SUPERVISION OF PHYSICIAN ASSISTANTS. During probation, Respondent is  
2 prohibited from supervising physician assistants.

3       8.   OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules  
4 governing the practice of medicine in California and remain in full compliance with any court  
5 ordered criminal probation, payments, and other orders.

6       9.   QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations  
7 under penalty of perjury on forms provided by the Board, stating whether there has been  
8 compliance with all the conditions of probation.

9       Respondent shall submit quarterly declarations not later than 10 calendar days after the end  
10 of the preceding quarter.

11       10. GENERAL PROBATION REQUIREMENTS.

12       Compliance with Probation Unit

13       Respondent shall comply with the Board's probation unit and all terms and conditions of  
14 this Decision.

15       Address Changes

16       Respondent shall, at all times, keep the Board informed of Respondent's business and  
17 residence addresses, email address (if available), and telephone number. Changes of such  
18 addresses shall be immediately communicated in writing to the Board or its designee. Under no  
19 circumstances shall a post office box serve as an address of record, except as allowed by Business  
20 and Professions Code section 2021(b).

21       Place of Practice

22       Respondent shall not engage in the practice of medicine in Respondent's or patient's place  
23 of residence, unless the patient resides in a skilled nursing facility or other similar licensed  
24 facility.

25       License Renewal

26       Respondent shall maintain a current and renewed California physician's and surgeon's  
27 license.

28       ///



1 Travel or Residence Outside California

2 Respondent shall immediately inform the Board or its designee, in writing, of travel to any  
3 areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty  
4 (30) calendar days.

5 In the event Respondent should leave the State of California to reside or to practice  
6 Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of  
7 departure and return.

8 11. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be  
9 available in person upon request for interviews either at Respondent's place of business or at the  
10 probation unit office, with or without prior notice throughout the term of probation.

11 12. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or  
12 its designee in writing within 15 calendar days of any periods of non-practice lasting more than  
13 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is  
14 defined as any period of time Respondent is not practicing medicine in California as defined in  
15 Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month  
16 in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All  
17 time spent in an intensive training program which has been approved by the Board or its designee  
18 shall not be considered non-practice. Practicing medicine in another state of the United States or  
19 Federal jurisdiction while on probation with the medical licensing authority of that state or  
20 jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall  
21 not be considered as a period of non-practice.

22 In the event Respondent's period of non-practice while on probation exceeds 18 calendar  
23 months, Respondent shall successfully complete a clinical training program that meets the criteria  
24 of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and  
25 Disciplinary Guidelines" prior to resuming the practice of medicine.

26 Respondent's period of non-practice while on probation shall not exceed two (2) years.

27 Periods of non-practice will not apply to the reduction of the probationary term.

28 Periods of non-practice will relieve Respondent of the responsibility to comply with the

1 probationary terms and conditions with the exception of this condition and the following terms  
2 and conditions of probation: Obey All Laws; and General Probation Requirements.

3 13. COMPLETION OF PROBATION. Respondent shall comply with all financial  
4 obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the  
5 completion of probation. Upon successful completion of probation, Respondent's certificate shall  
6 be fully restored.

7 14. VIOLATION OF PROBATION. Failure to fully comply with any term or condition  
8 of probation is a violation of probation. If Respondent violates probation in any respect, the  
9 Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and  
10 carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke  
11 Probation, or an Interim Suspension Order is filed against Respondent during probation, the  
12 Board shall have continuing jurisdiction until the matter is final, and the period of probation shall  
13 be extended until the matter is final.


14 15. LICENSE SURRENDER. Following the effective date of this Decision, if  
15 Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy  
16 the terms and conditions of probation, Respondent may request to surrender his license. The  
17 Board reserves the right to evaluate Respondent's request and to exercise its discretion in  
18 determining whether or not to grant the request, or to take any other action deemed appropriate  
19 and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent  
20 shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its  
21 designee and Respondent shall no longer practice medicine. Respondent will no longer be subject  
22 to the terms and conditions of probation. If Respondent re-applies for a medical license, the  
23 application shall be treated as a petition for reinstatement of a revoked certificate.

24 16. PROBATION MONITORING COSTS. Respondent shall pay the costs associated  
25 with probation monitoring each and every year of probation, as designated by the Board, which  
26 may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of  
27 California and delivered to the Board or its designee no later than January 31 of each calendar  
28 year.

1 ACCEPTANCE

2 I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully  
3 discussed it with my attorney, Theodore A. Cohen, Esq. I understand the stipulation and the  
4 effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated  
5 Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be  
6 bound by the Decision and Order of the Medical Board of California.

7  
8 DATED: 2/22/15

  
9 KEINO ANDRE RUTHERFORD, M.D.  
Respondent

10 I have read and fully discussed with Respondent Keino Andre Rutherford, M.D. the terms  
11 and conditions and other matters contained in the above Stipulated Settlement and Disciplinary  
12 Order. I approve its form and content.

13  
14 DATED: 2/24/15

  
15 THEODORE A. COHEN, ESQ.  
Attorney for Respondent

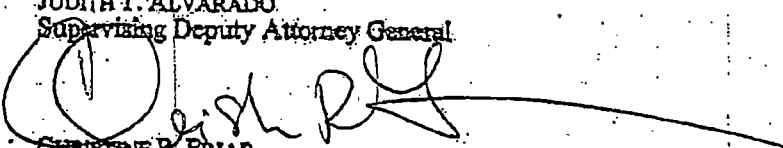
16  
17 ENDORSEMENT

18 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully  
19 submitted for consideration by the Medical Board of California.

20 Dated: 2/24/2015

Respectfully submitted,

21 KAMALA D. HARRIS  
Attorney General of California  
22 JUDITH T. ALVARADO  
Supervising Deputy Attorney General

  
23 CHRISTINE R. PRIAR  
24 Deputy Attorney General  
25 Attorneys for Complainant  
26  
27  
28

LA2014612618

**Exhibit A**

**Accusation No. 11-2013-233225**

1 KAMALA D. HARRIS  
Attorney General of California  
2 JUDITH T. ALVARADO  
Supervising Deputy Attorney General  
3 CHRISTINE R. FRIAR  
Deputy Attorney General  
4 State Bar No. 228421  
California Department of Justice  
5 300 So. Spring Street, Suite 1702  
Los Angeles, CA 90013  
6 Telephone: (213) 897-6404  
Facsimile: (213) 897-9395  
7 *Attorneys for Complainant*

FILED  
STATE OF CALIFORNIA  
MEDICAL BOARD OF CALIFORNIA  
SACRAMENTO NOV 23 2014  
BY *[Signature]* ANALYST

8 BEFORE THE  
9 MEDICAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS  
10 STATE OF CALIFORNIA

11 In the Matter of the Accousation Against:

Case No. 11-2013-233225

12 KEINO ANDRE RUTHERFORD, M.D.  
9449 Imperial Hwy  
13 Downey, CA 90242

ACCUSATION

14 Physician's and Surgeon's Certificate  
No: A 80432,

15 Respondent.

16  
17  
18 Complainant alleges:

19 PARTIES

20 1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official  
21 capacity as the Executive Director of the Medical Board of California, Department of Consumer  
22 Affairs.

23 2. On or about September 6, 2002, the Medical Board of California issued Physician's  
24 and Surgeon's Certificate Number A 80432 to Keino Andre Rutherford, M.D. (Respondent). That  
25 license was in effect at all times relevant to the charges brought herein and will expire on October  
26 31, 2015, unless renewed.

27 ///

28 ///

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2234 of the Code, states in pertinent part:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"...."

5. Section 2239, subdivision (a), of the Code states:

"(a) The use or prescribing for or administering to himself or herself, of any controlled substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to any other person or to the public, or to the extent that such use impairs the ability of the licensee to practice medicine safely or more than one misdemeanor or any felony involving the use, consumption, or self-administration of any of the substances referred to in this section, or any combination thereof, constitutes unprofessional conduct. The record of the conviction is conclusive evidence of such unprofessional conduct."

6. Section 2280 of the Code states:

A No licensee shall practice medicine while under the influence of any narcotic drug or alcohol to such extent as to impair his or her ability to conduct the practice of medicine with safety to the public and his or her patients. Violation of this section constitutes unprofessional conduct and is a misdemeanor.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Dangerous Use of Alcohol)

3 7. Respondent is subject to disciplinary action under Code sections 2239, subdivision  
4 (a), and 2280, in that Respondent consumed alcohol in a manner dangerous to others and to the  
5 extent that it impaired his ability to conduct the practice of medicine with safety to the public and  
6 his patients. The circumstances are as follows:

7 8. On or about the evening of Saturday, June 8, 2013, at approximately 6:00 p.m.,  
8 Respondent arrived for his shift at the Kaiser Permanente Downey Medical Center ("Kaiser"),  
9 located in Downey, California, where he was employed as an Internal Medicine hospitalist. A  
10 hospitalist is responsible for admitting and treating patients that an emergency room physician has  
11 deemed necessary for admission for further treatment.

12 9. When Respondent arrived at Kaiser for his shift, there were no patients waiting to see  
13 him and he went to a call room to rest.

14 10. Commencing at approximately 9:00 p.m., hospital staff began paging and otherwise  
15 trying to contact the Respondent because there were patients awaiting care who he needed to  
16 admit to the hospital from the emergency room.

17 11. For approximately two (2) hours Respondent failed to respond to any of these  
18 attempts at locating him.

19 12. At approximately 11:15 p.m., and after extensive and loud knocking, another doctor  
20 on duty and a security guard opened the door of a locked call room where they found Respondent  
21 sleeping.

22 13. Respondent had difficulty waking up.

23 14. Multiple Kaiser staff members observed Respondent's breath to smell of alcohol and  
24 Respondent to exhibit other signs of intoxication.

25 15. Respondent admits that he consumed alcohol earlier that day.

26 16. In response to their suspicion that he was intoxicated, Respondent was repeatedly told  
27 by hospital staff members that he would need to go to the emergency room to be evaluated for  
28 alcohol and other substance use before treating any patients that night.

1 17. Respondent repeatedly refused to be tested.

2 18. Respondent was not allowed to see patients that night and was told that he could  
3 either be evaluated, continue to rest in a call room or the hospital staff could arrange for a taxi to  
4 take him home.

5 19. Respondent agreed to take a taxi home. Respondent, however, did not leave the  
6 hospital in a taxi, but instead left in his own vehicle, which he drove.

7 20. Respondent's conduct, as set forth in paragraphs 8-19, inclusive above, demonstrates  
8 that Respondent consumed alcohol in a manner dangerous to others and to the extent that it  
9 impaired his ability to conduct the practice of medicine with safety. Specifically, Respondent  
10 reported for his shift at Kaiser while under the influence of alcohol and was unable to admit any  
11 patients in need of care from the emergency room to the hospital that night because he was asleep  
12 in a call room and could not be located by hospital staff for hours. Respondent is subject to  
13 disciplinary action under Code sections 2239, subdivision (a), and 2280.

14 **SECOND CAUSE FOR DISCIPLINE**

15 (Unprofessional Conduct)

16 21. The allegations set forth in paragraphs 7-20 are hereby re-alleged and incorporated as  
17 though set forth fully herein.

18 22. Respondent is subject to disciplinary action under Code sections 2234, subdivision  
19 (a), 2239, subdivision (a), and 2280. The circumstances are as follows:

20 23. Respondent arrived at Kaiser for his scheduled shift on June 8, 2013, but could not  
21 admit or treat any patients because he could not be located by hospital staff for approximately two  
22 (2) hours and when he was located, he was observed to be under the influence of alcohol, and the  
23 hospital staff forbade him from treating any patients unless he underwent an evaluation for  
24 alcohol and other substance use, which he refused to do.

25 24. Respondent's acts and/or omissions as set forth in paragraphs 21-23, inclusive above,  
26 whether proven individually, jointly, or in any combination thereof, constitute unprofessional  
27 conduct pursuant to Code sections 2234, subdivision (a), 2239, subdivision (a), and 2280.

28 Therefore, cause for discipline exists.



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